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3:01-CV-00671 DEAL V. SAN DIEGO TRUX

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CLERK OF COURT

BY: *[Signature]* DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DAVID DEAL,

Plaintiff,

v.

SAN DIEGO TRUX, a California business,  
JOHN LAWRENCE, an individual, PAUL  
McGINNIS, an individual, AARON  
HOLLINS dba ONLINE OUTFITTERS, and  
DOES 1 through 100, inclusive,

Defendants.

Civil No.01cv0671-H (NLS)

**ORDER SETTING EARLY NEUTRAL  
EVALUATION CONFERENCE**

IT IS HEREBY ORDERED that an Early Neutral Evaluation of your case will be held on July 3, 2001 at 2:00 p.m. in the Chambers of the Magistrate Judge Nita L. Stormes, United States Magistrate Judge, Room 2160, U.S. Courthouse, 940 Front Street, San Diego, California 92101.

The following are mandatory guidelines for the parties preparing for the Early Neutral Evaluation Conference.

1. **Purpose of Conference:** The purpose of the Early Neutral Evaluation Conference ("ENE") is to permit an informal discussion between the attorneys, parties, and the settlement judge of every aspect of the lawsuit in an effort to achieve an early resolution of the case. All conference discussions will be informal, off the record, privileged and confidential. Counsel for any non-English speaking parties is responsible for arranging for the appearance of an interpreter at the conference.

2. **Personal Appearance Of Parties Is Required** : Pursuant to CivLR 16.1(c) all counsel, all parties, and any other person(s) whose authority is required to negotiate and enter into settlement

shall appear in person at the conference, shall be prepared to discuss the claims and defenses, and shall be legally and factually prepared to discuss and resolve the case at the Early Neutral Evaluation Conference. Counsel appearing without their clients (whether or not counsel has been given settlement authority) will be cause for immediate imposition of sanctions and will also result in the immediate termination of the conference.

3. **Full Settlement Authority Required:** In addition to counsel who will try the case, a party or party representative with full settlement authority must be present for the conference. In the case of a corporate entity, an authorized representative of the corporation who is not retained outside counsel must be present and must have discretionary authority to commit the company to pay an amount up to the amount of the plaintiff's prayer (excluding punitive damage prayers). The purpose of this requirement is to have representatives present who can settle the case during the course of the conference without consulting a superior. Counsel for a government entity may be excused from this requirement so long as the government attorney who attends the ENE conference (1) has primary responsibility for handling the case; and (2) may negotiate settlement offers which the attorney is willing to recommend to the government official having ultimate settlement authority.

4. **Confidential ENE Statements Required:** No later than three (3) court days prior to the Early Neutral Evaluation Conference, the parties shall submit confidential statements of five pages or less directly to the chambers of Magistrate Judge Stormes outlining the nature of the case, the claims, and the defenses. These statements shall not be filed or served on opposing counsel.

5. **New Parties Must Be Notified By Plaintiff's Counsel:** Plaintiff's counsel shall give notice of the Early Neutral Evaluation Conference to parties responding to the complaint after the date of this notice.

6. **Case Management Under the Amended Federal Rules:** In the event the case does not settle at the Early Neutral Evaluation Conference, the parties can expect to leave the ENE with Rule 26 compliance dates or deadlines. Parties shall therefore be prepared to discuss the following matters at the conclusion of the ENE conference:

- a. Any anticipated objections under Federal Rule of Civil Procedure 26(a)(1)(E) to the initial disclosure provisions of Federal Rule of Civil Procedure 26(a)(1)(A-D);

- b. The scheduling of the Federal Rule of Civil Procedure 26(f) conference within 24 days following the ENE:
- c. The date of initial disclosure and the date for lodging the discovery plan within 14 days following the Rule 26(f) conference; and,
- d. The scheduling of a Case Management Conference pursuant to Federal Rule of Civil Procedure 16(b) within 21 days following the Rule 26(f) conference.

The Court will issue an order following the Early Neutral Evaluation Conference addressing these issues and setting dates as appropriate.

7. **Requests to Continue an ENE Conference:** Local Rule 16.1(c) requires that an Early Neutral Evaluation Conference take place within 45 days of the filing of the first answer. Requests to continue ENEs are rarely granted. However, the Court will consider formal, written *ex parte* requests to continue an ENE conference when extraordinary circumstances exist that make a continuance appropriate. In and of itself, having to travel a long distance to appear in person is not “extraordinary.” **Absent extraordinary circumstances, requests for continuances will not be considered unless submitted in writing no less than seven (7) days prior to the scheduled conference.**

Questions regarding this case or the mandatory guidelines set forth herein may be directed to the Magistrate Judge's law clerks at (619) 557-5391. A Notice of Right to Consent to Trial Before a United States Magistrate Judge is attached for your information.

Dated: 5-30-01

  
NITA L. STORMES  
United States Magistrate Judge

cc: Judge Marilyn L. Huff  
All Counsel of Record and Parties Without Counsel

1                    **NOTICE OF RIGHT TO CONSENT TO TRIAL**  
2                    **BEFORE A UNITED STATES MAGISTRATE JUDGE**

3            IN ACCORDANCE WITH THE PROVISIONS OF 28 U.S.C. § 636(c), YOU ARE  
4            HEREBY NOTIFIED THAT A U.S. MAGISTRATE JUDGE OF THIS DISTRICT MAY,  
5            UPON THE CONSENT OF ALL PARTIES, ON FORM 1A AVAILABLE IN THE CLERK'S  
6            OFFICE, CONDUCT ANY OR ALL PROCEEDINGS, INCLUDING A JURY OR NON-JURY  
7            TRIAL, AND ORDER THE ENTRY OF A FINAL JUDGMENT. COUNSEL FOR THE  
8            PLAINTIFF SHALL BE RESPONSIBLE FOR OBTAINING THE CONSENT OF ALL  
9            PARTIES, SHOULD THEY DESIRE TO CONSENT.

10           YOU SHOULD BE AWARE THAT YOUR DECISION TO CONSENT OR NOT TO  
11           CONSENT IS ENTIRELY VOLUNTARY. ONLY IF ALL PARTIES CONSENT WILL THE  
12           JUDGE OR MAGISTRATE JUDGE TO WHOM THE CASE HAS BEEN ASSIGNED BE  
13           INFORMED OF YOUR DECISION.

14           JUDGMENTS OF THE U.S. MAGISTRATE JUDGES ARE APPEALABLE TO THE  
15           U.S. COURT OF APPEALS IN ACCORDANCE WITH THIS STATUTE AND THE FEDERAL  
16           RULES OF APPELLATE PROCEDURE.  
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